Appendix A

SUPREME COURT

NEW YORK COUNTY—SPECIAL TERM, PART I
N.Y.L.J.—Friday, July 7, 1967

By Mr. Justice Levey.

MATTER OF GILL (Gair)—Petitioner moves for a final order confirming the inquisition and findings herein and respondent cross-moves for an order denying the commissioner's report and for a further proceeding before an ordinary petit jury.

After a reading of the minutes of the inquisition, I have concluded that upon all the evidence adduced, the incompetency of the respondent has ben conclusively established, and, accordingly, the unanimous verdict of the jury of fourteen and the report of the commissioner are confirmed.

There were no prejudicial errors committed by the commissioner in connection with his conduct of the trial. While the conversations had between the guardian ad litem and his wife and a member or members of the jury in the informal surroundings of the sheriff's jury quarters in the Surrogate's Court were thoughtless and unnecessary, the extent of such talks as developed before me under oath and vigorous cross-examination, were innocuous, unrelated to anything concerning the case or trial, and absolutely irrelevant, forming no basis for the granting of a motion for a mistrial.

Respondent further claims that the use of a sheriff's panel (a blue ribbon jury), although the instant one ultimately included four members of the county jail list, invalidated the proceedings and raised "legal problems of

violation or statute and denial of equal protection of the law and due process of the law." Such contention is wholly without merit (see Fay v. New York, 332 U. S. 261).

The parties having resolved the questions raised by the supplemental cross-motion in connection with reimbursement, the same is denied as academic.

Settle order in accordance with the above, providing in blank for the designations of committees of the person and property of the respondent.

That portion of the proceedings relating to the fixing of fees of respondent's counsel is held in abeyance pending the applications by others for fees and allowances.

Appendix B

At a term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York, on the 25th day of April, 1968.

Present:

HON. SAMUEL W. EAGER,
Justice Presiding,

" ARON STEUER,
" LOUIS J. CAPOZZOLI,
" GEORGE TILZER,
" BENJAMIN J. RABIN,
Justices.

M-4311

In the Matter of the Application of

ROBERT L. GILL and EDWARD G. SWEENEY,
Petitioners-Respondents,

for the Appointment of a Committee of the Person and Property of

M. ELIZABETH GAIR,
an alleged Incompetent Person,
Respondent-Appellant.

ORDER ON MOTION TO DISMISS APPEAL

An appeal having been taken to this Court by the respondent-appellant from the order, of the Supreme Court,

Appendix B

New York County duly entered on the 31st day of July, 1967, And Leon Leighton, Guardian ad Litem having moved to dismiss said appeal,

Now, upon reading and filing the notice of motion, with proof of due service thereof, and the affidavit of Leon Leighton and statement of Vivian F. Gentleman, in support of said motion, and the statement of Orrin G. Judd in opposition thereto, and after hearing Mr. Leon Leighton and Vivian F. Gentleman for the motion, and Mr. Orrin G. Judd opposed,

It hereby is unanimously ordered that the motion to dismiss said appeal be and the same hereby is granted with $10 costs, unless the appellant perfects the appeal for the September 1968 Term of this Court. Upon failure to so perfect the appeal, an order dismissing the appeal may be entered ex parte, provided a copy of this order is served upon the appellant with ten days after the date of entry hereof.

Enter:

HYMAN W. GAMSO
Clerk.

Appendix C

At a term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York, on the 18th day of July, 1968.

Present:

HON. SAMUEL W. EAGER,
Justice Presiding,

" ARON STEUER,
" LOUIS J. CAPOZZOLI,
" GEORGE TILZER,
" BENJAMIN J. RABIN,
Justices.

M-5181

In the Matter of the Application of

ROBERT L. GILL and EDWARD G. SWEENEY,
Petitioners-Respondents,

for the Appointment of a Committee of the Person and Property of

M. ELIZABETH GAIR,
an alleged Incompetent Person,
Respondent-Appellant.

The above named respondent-appellant having moved for an enlargement of time within which to perfect her appeal from the order of the Supreme Court, New York County, entered on July 31, 1967,

Appendix C

Now, upon reading and filing the notice of motion, with proof of due service thereof, and the statement of Orrin G. Judd in support of said motion, and the statement of Vivian F. Gentleman and affidavit of Charles L. Sylvester in opposition thereto, and after hearing Mr. Orrin G. Judd for the motion, and Vivian F. Gentleman and Mr. Charles L. Sylvester opposed,

It is ordered that the said motion be and the same hereby is denied with $10 costs.

Enter:

HYMAN W. GAMSO
Clerk.

Appendix D

At a term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York, on the 23rd day of August, 1968.

Present:

SUPREME COURT
OF THE STATE OF NEW YORK

APPELLATE DIVISION—FIRST DEPARTMENT

(Supreme Court Index Number 41756/67)
Index No. M-5181

In the Matter of the Application of

ROBERT L. GILL and EDWARD G. SWEENEY,

Petitioners-Respondents,

for the Appointment of a Committee of the Person and Property of

M. ELIZABETH GAIR,
an alleged Incompetent Person,

Respondent-Appellant.

ORDER DISMISSING APPEAL

The respondent-appellant having appealed to the Appellate Division of the Supreme Court, First Judicial Department, from an order of the Supreme Court of the County of New York, entered in the office of the County

Appendix D

Clerk of the County of New York on the 31st day of July, 1967, confirming the findings of the jury as to incompetency and adjudging and decreeing M. Elizabeth Gair to be incompetent to manage herself and her affairs and appointing a Committee of her Person and Property, and Leon Leighton, Esq., Guardian *ad Litem* herein, having moved to dismiss said appeal and this Court by its order dated the 25th day of April, 1968 having unanimously ordered that the said motion to dismiss the appeal was granted unless the respondent-appellant perfected the appeal for the September, 1968 Term of this Court and having further ordered that upon failure to so perfect the appeal an order dismissing that appeal may be entered ex parte, and respondent-appellant having moved for an enlargement of time to the November, 1968 Term of this Court within which to perfect her appeal and this court by its order dated the 18th day of July, 1968 having denied the said motion with costs, and Vito F. Lanza, having by order to show cause dated August 1, 1968 returnable September 3, 1968, requested an order directing that the respondent-appellant's time to perfect this appeal be extended to the December, 1968 Term of this court and that the time to perfect the appeal be forthwith extended until the determination of such application and further order of this court, and the Honorable Harold A. Stevens, Justice of this Court, after hearing argument on August 1, 1968, having stricken from said order to show cause the provisions for a stay extending respondent-appellant's time within which to perfect this appeal until further order of the Court, and respondent-appellant having failed to serve and file any of the papers required to be filed and served under Rule 5530 of the Civil Practice Law and Rules and

Appendix D

in all respects having failed to perfect the appeal for the September 1968 Term of this Court as provided by order of this court dated the 25th day of April, 1968.

Now, upon reading and filing the statement of Vivian F. Gentleman, attorney for the petitioners-respondents, and upon the notice of appeal herein, the order of this court dated the 25th day of April 1968, the order of this court dated the 18th day of July, 1968 and the order to show cause dated the 1st day of August, 1968, it is

ORDERED, that the appeal herein from the order of the Supreme Court, New York County, entered on the 31st day of July, 1967, be and the same hereby is dismissed.

Enter:

/s/ HYMAN W. GAMSO
Clerk.

Filed August 23, 1968

Appendix E

At a term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York, on the 19th day of September, 1968.

Present:

Hon. Harold A. Stevens,
Justice Presiding,
" Samuel W. Eager,
" Louis J. Capozzoli,
" Owen McGivern,
" Benjamin J. Rabin,
Justices.

M-5557

In the Matter of the Application of

Robert L. Gill and Edward G. Sweeney,

Petitioners-Respondents,

for the Appointment of a Committee of the Person and Property of

M. Elizabeth Gair,
an alleged Incompetent Person,

Respondent-Appellant.

The above named respondent-appellant having moved this Court for an order vacating the order of this Court, entered on August 23, 1968, which order dismissed, for lack of prosecution, appellant's appeal for an order of

Appendix E

the Supreme Court, New York County, entered on July 31, 1967; and for other relief,

Now, upon reading and filing the order to show cause, with proof of due service thereof, and the affidavit and memorandum of Vito F. Lanza and the affidavit of Leon Leighton in support of said motion, and the statement of Vivian F. Gentleman in opposition thereto, and after hearing Messrs. Vita F. Lanza and Leon Leighton for the motion, and Vivian F. Gentleman opposed,

It is hereby unanimously ordered that the said motion be and the same hereby is denied with $10 costs.

Enter:

HYMAN W. GAMSO
Clerk.

Appendix F

At a term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York, on the 19th day of September, 1968.

Present:

HON. HAROLD A. STEVENS,
Justice Presiding,
" SAMUEL W. EAGER,
" LOUIS J. CAPOZZOLI,
" OWEN McGIVERN,
" BENJAMIN J. RABIN,
Justices.

M-5391

In the Matter of the Application of

ROBERT L. GILL and EDWARD G. SWEENEY,

Petitioners-Respondents,

for the Appointment of a Committee of the Person and Property of

M. ELIZABETH GAIR,
an alleged Incompetent Person,

Respondent-Appellant.

The above named respondent-appellant having moved for an enlargement of time within which to perfect her appeal

from the order of the Supreme Court, New York County, entered on July 31, 1967,

Now, upon reading and filing the order to show cause, with proof of due service thereof, and the affidavits of Vito F. Lanza in support of said motion, and the statement of Vivian F. Gentleman and affidavits of Leon Leighton in opposition thereto, and after hearing Mr. Vito F. Lanza for the motion, and Vivian F. Gentleman and Mr. Leon Leighton opposed,

It is hereby unanimously ordered that the said motion be and the same hereby is dismissed as academic.

Enter:

HYMAN W. GAMSO
Clerk.

Appendix G

At a term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York, on the 19th day of September, 1968.

Present:

HON. HAROLD A. STEVENS,
Justice Presiding,
" SAMUEL W. EAGER,
" LOUIS J. CAPOZZOLI,
" OWEN McGIVERN,
" BENJAMIN J. RABIN,
Justices.

M-5517

In the Matter of the Application of

ROBERT L. GILL and EDWARD G. SWEENEY,

Petitioners-Respondents,

for the Appointment of a Committee of the Person and Property of

M. ELIZABETH GAIR,
an alleged Incompetent Person,

Respondent-Appellant.

The above named respondent-appellant having moved for leave to dispense with the printing or reproducing of the record on appeal in connection with her appeal from the

Appendix G

order of the Supreme Court, New York County, entered on the 31st day of July, 1967 and for leave to have the appeal heard on the original record and upon typewritten or reproduced appellant points; and for other relief,

Now, upon reading and filing the notice of motion, with proof of due service thereof, and the affidavit of Leon Leighton, Guardian Ad Litem, and Vito F. Lanza in support of said motion, and after hearing Mr. Leon Leighton for the motion, and no one appearing in opposition thereto,

It is ordered that the said motion be and the same hereby is dismissed as academic.

Enter:

HYMAN W. GAMSO
Clerk.

Appendix H

Excerpts From Transcript of Testimony of the Incompetent pp. 1042-45

[1042] A. I've known him [Mr. Lanza] so long that I wouldn't be able to remember. I knew him when I was in my riding days.

Q. How long ago was that? A. Well, I could take it up again with hardly a murmur when I have a man of his caliber.

Q. How old were you when you first met Mr. Lanza? A. Well, I've been driving with him and he drives magnificently. I never have to question his driving.

Q. Do you remember how old you were when you first met Mr. Lanza? A. Well, I was a young woman. It wouldn't be young for these young men. I had plenty of chances. I didn't have to come down here to get any. I've had lovely men and all gentlemen and Mr. Lanza is a gentleman even in his fingertips. I'm proud to show off his work, because his work is mammoth.

Q. You told me that Mr. Lanza is majestic. A. I don't want anyone taking care of me except Mr. Lanza. That's all. He doesn't have to take care to take me for a drive. He drives so miraculously, I couldn't complain. With my children I have to give the little boy a little more—I don't know which one it was. I mix them up pretty well, because they both seem to be children.

Q. When I first came to you— A. You haven't made such an impression on me.

[1043] Q. Do you remember telling me that Mr. Lanza could marry you any time he wanted to? A. I don't really remember ever telling you that, but I know he's always been very nice and he's been a gentleman. That's all.

Appendix H

Q. Do you remember asking me to be best man at your wedding? A. That was just one of my silly things. That was just another silly thing.

Q. But you kept on telling me that every time I came to see you. A. Then I must have meant it a little bit, but I have no intention of ever thinking about it. It never entered my head, even your telling me now.

Q. Do you remember when I came up to see you last Tuesday— A. I don't remember.

Q. May I ask you if you remember telling me that— A. My mother was alive possibly then. Mother just passed away and my father passed away. You wouldn't like to see where those two boys are putting me. It's both of them. I'll tell you, they're going to catch it from me. It's going to be caught pretty hard. All their lovely thinking, I have so much money, they're going to be disappointed that they'll [1044] possibly cry a little bit. They're children.

Q. How much money do you have? A. Well, I hate to tell you. It would be a little embarassing for me. I rather have you ask Mr. Lanza.

Q. He is the one that knows how much money you have? A. Absolutely.

Q. Do you know? A. Yes, I do.

Q. Do you mind telling me? A. No, I would rather not tell you. That's my privilege.

Q. Yes. A. And now I would like to go as soon as I possibly can. I don't care for any of the women here. I don't care what lawyer my sister may have. It means nothing to me. I don't know if Lucy is here.

Q. How many sisters do you have? A. We were a family of eight and I had three or four nice sisters, but Lucy is a child still.

Appendix H

Q. Who are the other sisters? A. Florence was killed by a Mr. Lanza. Mr. Lanza, the man—oh, oh—Lucy, if she's there would really know who killed my sister.

Q. How was she killed? [1045] A. I wouldn't know that. Yes, she was very near me and I was phoning her every day and always I wouldn't know who it was.

Q. How was she killed? A. How old?

Q. No, how was she killed? A. Well, really I wouldn't know.

Q. Who told you that she was killed? A. Well, that's a lot of question you're asking me that I don't know. I never asked to know. I just know.

Q. Do you have any brothers? A. Yes, I had a magnificent brother, George Gair. He's gone. My father's gone and my mother's gone. I'm practically alone with those two children. I have no use for them at all. They're wanting money before they're even ready for it. They haven't shown me anything that they've really done. Mr. Lanza, yes. You can see that huge building. And that young man, I don't know his name, really, but he's doing it very well, indeed. (indicating to the reporter) If I made a mistake, he knows I haven't said it.

Q. Which huge building are you talking about that Mr. Lanza owns? A. I'm always talking about Mr. Lanza.